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Letter Ruling 00-13: Application of Sales Tax to Research and Report Services

September 12, 2000

You have requested a letter ruling regarding the application of the Massachusetts sales tax to research and report services performed by your company, ***** ("Company").

Facts

The following is your representation of the facts upon which we base this letter ruling. Company, headquartered in ***** [outside of Massachusetts], provides consumer research to consumer product manufacturers, market research firms, service companies, advertising agencies, and news or academic organizations located throughout the United States. Company also provides public and political polling.

Company gathers research by surveying the preferences of national sample groups. Company selects respondents at random from all fifty states and provides respondents' households with a free WebTV and access to the Internet. Company pays sales tax to [the state in which it is located] on the cost of the equipment and maintains ownership of the equipment. The chosen respondents are asked to rate consumer products, view movie trailers of upcoming releases or view rough commercials in the privacy of their homes. The respondents submit the information to Company electronically using the equipment provided by Company. Once Company receives the information at any of their offices located throughout the United States, it summarizes the results and compiles reports that are provided to their customers.

The reports are sent to Company's customers in electronic form as an e-mail attachment. The reports are primarily intended for sole use by the customer and may not be reproduced by Company.^[1] Company is typically the owner of the compiled data; however, a customer occasionally negotiates ownership of the compiled data. Such customers include news or academic organizations intending to publish survey results either on the evening news, in a newspaper, in an academic paper or posted on a website.

A typical contract between Company and a customer involves compiling and analyzing research as requested by the customer. Although surveys are customized for each customer, a certain amount of compiled information that is ultimately provided to the customer may have been obtained from Company's database. A common example of information that may be reproduced is demographic data. The historical data originated either from previous contracts performed for the same or entirely different customers. Company is generally restricted from using proprietary customer information.

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Rulings

1. Sales of all reports by Company that are transmitted electronically without an accompanying storage medium are not subject to the Massachusetts sales tax.
2. Sales of reports by Company in tangible form that involve compilation and analysis of new data, as well as historical data obtained from prior surveys for particular customers, are not "sales" and therefore are not subject to the Massachusetts sales tax. The identity of the customer does not change this result.

Discussion of Law

Massachusetts law imposes a five percent sales tax on retail sales of tangible personal property in Massachusetts by any vendor, unless otherwise exempt. G.L. c. 64H, § 2. A retail sale is defined as a sale of tangible personal property for any purpose other than resale in the regular course of business. G.L. c. 64H, § 1. A "sale" includes "the furnishing of information by printed, mimeographed or multigraphed matter, or by duplicating written or printed matter in any other manner, including the services of collecting, compiling or analyzing information of any kind or nature and furnishing reports thereof to other persons, *but excluding the furnishing of information which is personal or individual in nature and which is not or may not be substantially incorporated in reports furnished to other persons.*.... G.L. c. 64H, § 1 (emphasis added). However, charges for transmitting reports of any type by telephone lines, microwaves, or other electronic modes of transmission are not taxable, unless the vendor transfers an otherwise taxable storage medium imprinted with the reports as part of the same transaction. 830 CMR 64H.1.3(12).

Under the facts presented to us, Company sends a report to a customer electronically, as an electronic-mail attachment. Based on the above, all reports Company sends to a customer through electronic means are exempt from taxation, so long as the Company does not also send the customer the report on a storage medium, such as a diskette or a paper copy. If Company sends a report to a customer in tangible form, whether or not such reports are taxable depends on whether a "sale" has occurred. As stated above, under Massachusetts tax law, a "sale" does not include the furnishing of personal or individual information which is or may not be substantially incorporated in reports furnished to other persons.

In general, the "furnishing of information which is personal or individual in nature" has been construed to mean that the vendor obtained information and performed some analysis, synthesis or research which resulted in a unique report for a particular customer. In *Commissioner of Revenue v. McGraw-Hill, Inc.*, 383 Mass. 397 (1981), the Supreme Judicial Court held that the furnishing of information bulletins to subscribers in the construction industry was not within the definition of "sale" under G.L. c. 64H, § 1; such bulletins were held to be non-taxable reports of individual information. The bulletins were comprised of individual slips of paper containing information about single construction projects. The slips were periodically assembled, collated, and sent to subscribers based on each subscriber's "Market Profile." *Id.* at 398-400. The Court held that the furnished information was individual to each subscriber, and only valuable after the selection process. *Id.* at 402. The Court also held that the information furnished to subscribers was not substantially incorporated in reports furnished to other subscribers because no subscriber received the same reports as any other subscriber over a long period of time. *Id.* at 403.

In addition, the Department's prior public written statements on this issue treat similar services as outside the statutory definition of "sale." See Letter Ruling 81-43 (reports of individualized telecommunications information); LR 83-98 (reports of individualized computer product and market information generated from a database), LR 85-31 (personal and individual information) and LR 87-13 (computer generated individual patient medication schedules). See also 830 CMR 64H.1.3(8).^[2] If a report is considered to be personal or individual in nature, it is excluded from the definition of "sale" and is therefore not subject to sales tax. Based on the facts presented to us, Company's sale of tangible reports of information based on a compilation and analysis of new survey data, as well as historical data from prior surveys is not a "sale" under G.L. c. 64H, § 1, and, therefore, is not subject to the Massachusetts sales tax. Whether the Company's customer is an individual, for-profit business, such as a newspaper, or exempt organization, such as an academic institution, does not alter this result.

Very truly yours,

/s/Frederick A. Laskey

Frederick A. Laskey
Commissioner of Revenue

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[\[1\]](#) Additional analysis of the reports or other consulting services may be provided separately at the customer's request. Company provides these additional services pursuant to separate consulting agreements.

[\[2\]](#) 830 CMR 64H.1.3(8) provides as follows:

(8) *Furnishing of Information to Customers.*

(a) *Tax treatment of sales of reports of standard information.* Sales of reports or other information on printed matter or magnetic media, sold or intended to be sold to two or more purchasers, are generally taxable. Sales of reports include collecting, compiling, or analyzing information. Examples include database files, mailing lists, market research, and surveys.

(b) *Exemption for sales of reports of individual information.* The sale of a report of individual information, whether printed or on magnetic media, is not taxable if the report may not be or is not substantially incorporated into reports furnished to other persons.